

48A C.J.S. Judges § 372

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

X. Special or Substitute Judges and Like Judicial Officers

C. Authority, Powers, and Duties of Special or Substitute Judge

§ 372. Effect on special or substitute judge of return or holding of court by regular judge

[Topic Summary](#) | [References](#) | [Correlation Table](#)

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The appearance of the regular judge to resume his or her duties ordinarily operates to vacate the office of the special judge unless the terms of the special judge's assignment provide him or her with exclusive jurisdiction over a matter.

The appearance of the regular judge to resume his or her duties ordinarily operates to vacate the office of the special or substitute judge,¹ without any order to that effect,² and any decree rendered thereafter by the special or substitute judge is void.³ Nevertheless, it has been held that the special or substitute judge does not lose jurisdiction to complete the trial of a case because the regular judge returns during the trial and resumes his or her duties.⁴ If a specific judge is assigned to preside in a specific case, that assignment must be withdrawn before any other judge may do so.⁵ Although a visiting judge's term depends on the language used in the order of assignment, if the order allows the assignment to continue on all matters growing out of any cause heard, by hearing one motion, the visiting judge may obtain exclusive jurisdiction for good.⁶ Further, absent a case-specific assignment order or other language in an assignment order conferring exclusive authority, an ordinary assignment order for a specific period of time allows a duly elected and sworn judge to exercise authority over a case and complete the trial of the case even after the trial had begun with a visiting judge presiding.⁷

A judge sitting by assignment may preside over a court regardless of whether the regular district judge of that court was present and trying another case at the same time.⁸

The fact that an emergency judge grants an injunction in no way limits the discretion of the returning regular judge to dissolve it,⁹ and, under some provisions, the regular judge may, within a statutorily designated time after the entry of an order by a special judge, vacate the special judge's order and set the matter down for reconsideration.¹⁰

Where the return of the regular judge is readily determinable or expected, the temporary judge should refrain from modifying or revoking a previous judgment or order whenever possible except where a substantial right would be lost if not acted upon in a timely fashion due to a mistake or error in the previous order or judgment issued.¹¹

Effect of regular judge's holding court.

Where the jurisdiction existing in a judicial district is single, indivisible, and not susceptible of duplication, a substitute judge or a judge pro tempore may not hold court while the regular judge is also presiding,¹² and proceedings before such judge pro tempore or substitute judge are void.¹³

After disqualification.

The bare fact of there having been a judicial order or determination of a judge's disqualification does not prevent his or her reassuming full jurisdiction by a timely order showing that in fact there was no disqualification or that the disqualification has been removed.¹⁴

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Footnotes

- 1 N.Y.—*People v. De Puy*, 32 Misc. 2d 917, 224 N.Y.S.2d 389 (County Ct. 1962).
- 2 Ga.—*Atlanta Coach Co. v. Cobb*, 178 Ga. 544, 174 S.E. 131 (1934).
- 3 Ark.—*Cates v. Wunderlich*, 210 Ark. 724, 197 S.W.2d 482 (1946).
- 4 Mo.—*State ex rel. Ellis v. Creech*, 364 Mo. 92, 259 S.W.2d 372 (1953).
- As to authority of special judge as to particular case, see § 371.
- 5 Tex.—*In re Republic Parking System, Inc.*, 60 S.W.3d 877 (Tex. App. Houston 14th Dist. 2001).
- 6 Tex.—*In re Republic Parking System, Inc.*, 60 S.W.3d 877 (Tex. App. Houston 14th Dist. 2001).
- No exclusive jurisdiction in visiting judge**
- Tex.—*Davis v. Crist Industries, Inc.*, 98 S.W.3d 338 (Tex. App. Fort Worth 2003).
- 7 Tex.—*Sholars v. State*, 2003 WL 21229544 (Tex. App. Houston 14th Dist. 2003).
- 8 Tex.—*Mendoza v. Fleming*, 41 S.W.3d 781 (Tex. App. Corpus Christi 2001).
- 9 Fla.—*Lane v. Clein*, 137 So. 2d 15 (Fla. 3d DCA 1962).
- 10 Ark.—*Henry v. Powell*, 262 Ark. 763, 561 S.W.2d 296 (1978).
- 11 Wis.—*Starke v. Village of Pewaukee*, 85 Wis. 2d 272, 270 N.W.2d 219 (1978).
- 12 N.Y.—*Voegler v. Kelly*, 155 N.Y.S.2d 861 (Sup 1956).
- Vt.—*Ricci v. Bove's Estate*, 116 Vt. 406, 78 A.2d 13 (1951).
- 13 N.Y.—*Donovan v. Poulin*, 198 Misc. 895, 100 N.Y.S.2d 29 (County Ct. 1950).

Vt.—[Ricci v. Bove's Estate](#), 116 Vt. 406, 78 A.2d 13 (1951).

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Mont.—[State ex rel. McKendry v. District Court of Fourth Judicial District of State In and For Lake County](#), 201 Mont. 244, 653 P.2d 847 (1982).

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